

**CITY OF MORGAN HILL
CITY COUNCIL SPECIAL MEETING
MINUTES – JULY 7, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 4:30 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy
Council Member Chang (excused from closed session only)

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

Mayor Kennedy announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comment were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 4:32 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 5:00 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

John Dossetti thanked the Council and Public Works staff for the work being undertaken at the Monterey Road underpass.

No further comments were offered.

City Council Action

OTHER BUSINESS:

1. PRESENTATION OF COUNCIL SUBCOMMITTEE REPORT ON THE RESULTS OF THE INVESTIGATION INTO THE SURVEILLANCE OF THE CITY MANAGER

Mayor Kennedy stated that the matter before the Council is of the up most sensitivity and that the impact on the carriers and personal lives of all concerned can be enormous. He indicated that the Council must be fair, respectful, responsible and display integrity/compassion for everyone involved. He identified the ground rules for the conduct of this evening's meeting. He indicated that the Council will hear the report on the investigation from the Council subcommittee consisting of Council Members Carr and Sellers followed by questions. The subcommittee and the attorneys will then respond to questions. He stated that time will be provided for the respondents: Mr. Tichinin, Council Member Chang and her attorney. He noted that the Council has allocated one hour for this evening's report. He stated that it will be the Council's intention to call a special meeting on July 14, 2004 to discuss possible actions. Therefore, the Council does not intend to take action this evening other than what is mentioned on the agenda.

Mayor Pro Tempore Sellers addressed the logistics of the report prepared by the subcommittee. He said that when the Council was asked by its senior staff to try to discern what took place in a trip that the City Manager took on behalf of the City, the Council unanimously (5-0) agreed that it should undertake an investigation. All five Council members unanimously appointed two council members to investigate the situation. The Council appointed him and Council Member Carr to the subcommittee to undertake the task. The subcommittee strongly felt that the public needed to know the situation as soon as possible. He said that it was unfortunate that the "as soon as possible" was before the Fourth of July holiday. Had the report not been released at that time, there would be a delay of up to two weeks and that the subcommittee did not believe that it was appropriate to sit on the information for that period of time. This was the reason for releasing the information on July 2, 2004. He stated that the goal of the report was to present the facts as clearly, concisely and accurately as possible. The subcommittee understood that there would be an opportunity for individuals to respond. The subcommittee is encouraging responses in written format or oral responses. The subcommittee is recommending a separate meeting be scheduled on July 14 that would be dedicated to dealing with this issue. This is an attempt, on the Council's part, to have all facts known and all issues before it. The information will allow the Council to make an appropriate decision. He indicated that the subcommittee undertook this task with a heavy heart. The subcommittee did not know where the investigation would go at the onset. As it turned out, it involved individuals considered to be friends, individuals respected in the community; the most popular colleague and an individual who have been icons in the community for many years. He said that it was a sense of duty that drove the Council and a responsibility to its employees and the community that drove

the subcommittee to present the facts. He said that the subcommittee looks forward to receiving additional information this evening and to discuss with the Council future actions that might be taken.

Council Member Carr thanked Mayor Pro Tempore Sellers for all of the hard work that he put into this task the past five months of the investigation. He said that staff has always made themselves accessible to the subcommittee. He said that this is one of the most difficult tasks that he has had to undertake during his four year tenure as a Council Member and four years as a School Board Member. He said that this was a serious issue, one that he undertook with all seriousness. The investigation led was one that was fact based. The subcommittee wanted to find out the facts and to present the facts back to the Council so that it can make decisions based on facts. The subcommittee did not write the report as a narrative or with emotion. As elected officials, the subcommittee felt that it was the Council's greatest duty and obligation to maintain public trust. The report and the discussions to be undertaken and any actions to be taken are in the effort to maintain public trust. He stated that the public's business/involvement needs to be conducted in the highest of ethical standards. It is his hope that the results of the investigation, the report, and any action(s) the Council takes will be based upon this standard. Tonight, the subcommittee presents the report that was presented to the Council on Friday, July 2, 2004. He noted that the report contains several recommended actions for the Council to consider; the first of which is to accept the subcommittee's report on the results of its investigation through July 2, 2004. He said that the report does not come to any conclusions as to the facts of the matter, or agreeing/disagreeing with the facts of the matter. The subcommittee is requesting that the Council accept the report.

Mayor Pro Tempore Sellers addressed how the subcommittee undertook to prepare the report and some of the factual resources relied upon, particularly the interviews conducted with key players. He indicated that the Council retained the services of an investigator. There were also conversations with Council colleagues as well as documents and e-mails, and other resources that are public record. He stated that the subcommittee did not start with any conclusions or any thoughts in mind. What the subcommittee found at the end was the realization that Mr. Tichinin, following admission, undertook to retain an investigator, who was not licensed, to follow City Manager Tewes to Huntington Beach. That investigator surveiled Mr. Tewes during his trip. Initially, Mr. Tichinin did not respond truthfully when he was queried about the investigator. Mr. Tichinin subsequently responded that he did retain an investigator but did not believe that there were any laws broken. He noted that City Manger Tewes made a public announcement that he would be on a trip and that he would be missing a Council meeting in order to attend a conference. However, the details of his trip, where he was going to stay and the plane to be taken were not available to the public. The subcommittee felt that this information was significant as it narrowly defined who had access to this information. He indicated that Council Member Chang did ask specific questions about this trip, therefore, had this specific information. He stated that City Manager Tewes was initially approached by League of California Cities staff who was contacted by the hotel staff, indicating that someone specifically requested that they be located in a room adjacent to Mr. Tewes in "order to keep an eye on him." The hotel staff alerted League officials who in turn alerted City Manager Tewes. This was done by e-mail. City Manager Tewes received the information, 24-hours later. As well on the trip, a phone call was made to City Manager Tewes' room asking for someone who was not in the room. There was an order placed for two servings of hot chocolate. He said that the significance of this is the fact that hotel protocol is such that hotel staff does not accept orders for room service that does not come from the room to which it is to be delivered. The fact that it was two orders

and not one indicates that there was an attempt to create an appearance of something that might not have been the case. This is why the information was included in the report. The subcommittee felt that this information was germane to the investigation. City Manager Tewes noticed that there was an individual who appeared to be a guest at the hotel who was carrying camera equipment. Instead of taking a direct route to the elevators, City Manager Tewes stepped out of the way slightly. The individual passed by and attempted to maintain a distant contact with City Manager Tewes as he checked out. Upon returning to Morgan Hill, the first thing the City Manager did was to think about who might want to follow him. He said that he was not just thinking about his professional involvement but thought about his personal life. He wondered whether there any workers compensation claims or any other things that could possibly cause this situation. After much consideration and discussions with his family, City Manager Tewes concluded that in fact that the surveillance was likely due to his professional status. City Manager Tewes decided that it would be appropriate to ask his employers, the City Council, to conduct an investigation. He indicated that the Council followed with the investigation.

Council Member Carr said that in the process of the investigation, the Council hired private investigator to track down the person that followed City Manager Tewes. The investigator conducted interviews with hotel staff. The subcommittee was eventually able to learn the identity of the individual who had followed City Manager Tewes and to get him on video tape to confirm that he was the individual who surveiled City Manager Tewes. The subcommittee eventually asked the City investigator to initiate contact with the individual. Upon doing so, the individual had somehow been tipped off about the subcommittee's investigation. The individual knew who the City's investigator was and was expecting him. There were conversations held over 3-4 meetings where the individual was unwilling to reveal who had hired him other than the fact that it was an attorney from Morgan Hill. He stated that from this information, the subcommittee began a process of trying to narrow down the list of suspects of who this person might be. The subcommittee came to a point where it suspected Mr. Tichinin. He stated that Mr. Tichinin was initially approached by Mayor Pro Tempore Sellers and denied any involvement. Later, Council Member Chang suggested several times to Mayor Pro Tempore Sellers that he contact Mr. Tichinin again about the issue. Upon doing so, Mr. Tichinin confirmed that he had caused to be hired the investigator that followed City Manager Tewes. He indicated that he received a phone call from Council Member Chang before this admission in which she told him that she did not have any involvement in the hiring of the individual, that she did not know who hired the individual, and that she was not involved in any manner. He said that after Mr. Tichinin came forward with the fact that he had hired the individual, he received a second phone call from Council Member Chang in which she states that she had to lie to him the week before as Mr. Tichinin was her attorney at the time. Therefore, she could not say anything. From this, the subcommittee put together information as different pieces of factual information and observations came forth. He said that Council Member Chang may not have known when the City Manager was going to be surveiled but that she knew that Mr. Tichinin was going to proceed with the surveillance, knowing about the City Manager's trip plans for this particular weekend. When the subcommittee began this investigation, the initial question asked that evening was whether there were any members on the Council who knew any information about the matter at hand. If there was, that individual(s) come forward and disclose the information. The disclosure need not be in front of the entire Council and that it can be done in private. He noted that no one stepped forward, not even Council Member Chang. He indicated that the subcommittee undertook a four month (approximately) investigation on behalf of the employees of the Council and on behalf of the citizens of Morgan Hill, costing the City of Morgan Hill a sum of money in this investigative effort. He noted that the Council

was not aided by its colleague in this effort. He stated that the results of the investigation are before the Council in the report. He said that the subcommittee has taken the opportunity to provide the Council recommendations on several possible actions that could be taken as a result of the facts of the report.

Mayor Kennedy stated that he would agree to accept the subcommittee's report and the results of their investigation. It was his understanding that by accepting the report, the Council is accepting the information reported and not making a judgment decision. He noted that item 2 contained in the report suggests consideration of the adoption of appropriate recommendations. He inquired as to the Council's subcommittee recommendation with respect to holding a special meeting to consider the recommendations.

Council Member Carr said that the third item being recommended is that the Council call a special meeting on July 14 in order to consider the recommendations and any actions that the Council may want to take as a result of the report. It was his belief that the Council would be taking action on the report. Once the Council calls for the special meeting, the Council can move forward with any actions deemed appropriate. He felt that the Council can review the recommendations this evening and that if there are any items that can be eliminated that they be identified. If there is any preliminary direction to staff in order to carry out any actions that may be discussed next week, he recommended that it be given this evening.

Mayor Kennedy inquired whether anyone on the Council has a working relationship with either of the respondents; volunteer or paid (past or present).

Council Member Tate noted that all Council members have a relationship with Council Member Chang.

Mayor Pro Tempore Sellers said that all Council members also have a relationship with Mr. Tichinin, working on a variety of events such as IDI, civic and political activities. He suspects that Mr. Tichinin has been involved with a variety of political activities, including political donations over the years. He stated that the respondents are respected icons in the community. Therefore, their involvement with the Council is significant.

Linda McPharlin, representing Council Member Chang, indicated that she distributed a written response. She indicated that it is a preliminary response because of the time constraints. She read the response into the record.

Mayor Kennedy opened the floor to public comment.

Lori Barke inquired whether there has been a confirmation of the alleged affair. If so, who were the investigating parties? If there was not an affair, she inquired as to the credentials Council Members Carr and Sellers have as investigators? She stated that council members live in a fish bowl and that they are held up to the highest standards. She indicated that there have been rumors that there has been some suspicion of luncheons between the City Attorney and City Manager. She requested that the Council find out if there is a confirmation of the alleged affair.

Ken Kamei stated that he had a brief opportunity to read the report. He noted that the report was based on some interviews. He inquired whether the interviews were conducted under oath or whether they were merely conversations. He noted that one of the possible outcomes or actions articulated was to accept the report with no further action to be taken. He inquired whether the possible actions listed were ones with no hierarchy in mind or whether they were merely an array of options being presented for the Council to choose from. If so, he felt that this should so be stated. He referred to item 4g regarding possible legal action. He said that there is a conclusion with this particular option such that there is an assumption that Council Member Chang was aware of the surveillance. He felt that the assumption was something that needs to be determined and that the Council needs to come to this conclusion first. He inquired whether action is being postponed to July 14.

Mayor Kennedy indicated that the Council would discuss this evening whether action would be postponed to July 14.

Tom Magas stated that he finds it coincidental that the two main opponents to the Council's failed and most recent attempt efforts to bring in auto mall revenues to Morgan Hill are now the main targets of alleged improprieties.

Susan Bernardini noted that Mayor Kennedy asked the question as to what special relationship the Council members have to the respondent. She felt that in the spirit of full disclosure, each council member who has received a monetary political contribution from Mr. Tichinin needs to disclose how much and when. She also felt that each and every principal needs to be identified that Mr. Tichinin represents. She stated that a question that has not been answered is who hired Mr. Tichinin if it was not Council Member Chang. She said that individuals interested in the Main-Vierra project would like to know who Howard Vierra is. She felt that individuals need to know where pressure is being placed and by whom for land use development in the City. She stated that whether or not an affair took place was irrelevant as no one needs to know. She felt that the only conclusion that can be reached is that a person can come forward and threaten, coerce, extort or embarrass individuals who do not agree with them. She stated that this is unconscionable.

John Sorci stated that he hears a lot of things on a daily basis about lot of different individuals at his barbershop. He stated that he did not hear about this issue from anyone on the City Council. He said that the comments do not come from one specific individual but that it filters throughout the town.

No further comments were offered.

Mayor Kennedy indicated that the Council received a letter from Peter Kutras, Jr., Santa Clara County executive and resident of Morgan Hill. He read the letter received into the record.

Mayor Pro Tempore Sellers thanked individuals for their comments, indicating that one of the goals this evening was to add to the knowledge base. He said that the Council would make every effort to answer the questions raised this evening. He said that the subcommittee does not consider itself as investigators; thus the reason for hiring investigators. It was the Council's goal to present the facts given to the subcommittee. The subcommittee was a vessel through which the facts might be presented to the public. He said that interviews were not conducted under oath and that there was no hierarchy of items given in

the list presented. The subcommittee merely laid out a set of options. He disclosed that Mr. Tichinin and he have known each other for quite a few years. Mr. Tichinin served as his campaign treasurer at one point and that he donated to his past campaigns. He stated that he declined to participate in the Vierra matter early on in the process once he heard about the land use being considered. He thought that at some point in the future, it might be an area (base of El Toro) that he might want to consider for his family. Therefore, when the matter came before the public, he stated that it would be inappropriate for him to participate in the discussions and declined participation. He stated that the subcommittee focused its efforts on the facts. He said that there was one question raised by Council Member Chang's attorney regarding the consideration of this matter in public session, noting that the Council spent a lot of time discussing what would be appropriate as far as how best to provide an opportunity for full disclosure on the part of the individuals being named in the report. He requested that the City's special counsel respond to the process that was taken and the opportunities for future discussions.

Marguerite Leoni, special counsel, indicated that the Council is a public body. Because of the public's right to know, the Council has been operating through a subcommittee. She indicated that not even the entire Council was aware of the conclusions/results of the subcommittee until the report went out to the public. She stated that this matter could not be dealt with until it became public. She indicated that the subjects of the report were notified and provided with copies of the report before it was made public. The subjects were invited to make written responses and to respond this evening to help the Council understand the facts, making sure that the public knows all facts, even those that have not been discovered by the subcommittee. She noted that the Council is considering scheduling a special meeting that will allow additional opportunity to respond. She stated that due process is being offered in these proceedings as broadly as possible. However, these matters had to become public before the due process could be offered as these are matters of public interest.

Council Member Tate thanked Council Member Chang and Ms. McPharlin for providing a response this evening. He did not believe that the Council was here to make a decision this evening. The Council was here on a fact finding mission and to receive all facts. He stated his disappointment that Mr. Tichinin and/or his attorney were not able to add to the record this evening as the Council would like to receive as much of the facts as possible. He said that the Council will consider Ms. McPharlin's letter on the matter. It is his hope that the Council will receive information from Mr. Tichinin that can be considered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Accepted** the Subcommittee's Report on the Results of their Investigation through July 2, 2004. The motion carried unanimously (5-0).*

Council Member Carr noted that there was another issue that was raised by Ms. McPharlin and a member of the public as far as the investigation into the rumor of a relationship between staff. He said that this is something that the Council has been dealing with for a while. He indicated that the Council has asked members of the staff involved as to the relationship, stating that both have denied a relationship. The Council has asked both Council Member Chang and Mr. Tichinin if they have any evidence to support the rumor and that no evidence has been offered to support the rumored relationship. Mr. Tichinin was not able to provide evidence that any decisions/actions the Council has taken have been affected by the rumor of the relationship.

Mayor Pro Tempore Sellers said that the staff members involved have repeatedly and adamantly denied any involvement. He felt that due process needs to be taken.

Mayor Pro Tempore Sellers clarified that it was a goal of the subcommittee for the Council to consider adopting some recommendations. Should the Council decide that it wants to adopt any of the recommendations; the Council should schedule a meeting to do so.

Action: *Council Member Tate made a motion, seconded by Council Member Carr, to **Schedule** a special meeting on July 14, 2004 to consider adoption of appropriate recommendations or to take actions on the recommendations.*

Mayor Pro Tempore Sellers clarified that a separate meeting would be held where this would be the sole item on the agenda. The subcommittee would report any new information, incorporating any other information submitted. He said that the Council could consider possible actions, if any. He indicated that the list of possible actions was not an exhausted list. The items listed were ones brought to the subcommittee's attention.

Council Member Carr clarified that the action items presented on the list had no hierarchy implied. They are merely a gambit of possible actions.

Council Member Chang stated that she may have a conflict because she is a part of the matter. She indicated that she was told that she could not participate in any of the closed sessions relating to this matter. She said that her attorney received notice from the City late Friday afternoon. She indicated that she received a call from City staff stating that a special meeting was scheduled for July 5 at 8 a.m., a holiday, at the Police station. She was advised by Mayor Kennedy to contact Council Member Carr about the closed session. She advised that her attorney could not be present at the meeting. Therefore, the one closed session item was removed. She was then advised that the second closed session concerned her but that they could not stop her from attending. If she attended the meeting, it was indicated that the Council would have to change the scope of discussion. She said that she was not sure where she stands as far as the closed sessions are concerned as she was advised she had a conflict. Therefore, she could not attend the closed sessions or was told that it was felt that she had a conflict. She indicated that the Council did not advise her as to what the closed sessions were about. She stated that she was shocked to see the report and felt that she should have been given the opportunity to verify the information. It was her belief that she has a conflict at this time on the entire item.

Ms. Leoni indicated that special counsel has presented a memorandum on the conflict issue to the Council which Council Member Chang has every right to see. She stated that special counsel has also referred the issue to Council Member Chang's personal attorney on at least one occasion in writing. She stated that Council Member Chang is able to see the advice provided to the Council and that it is strongly recommended that she consult with her attorney on this matter. She clarified that Council Member Chang was specifically invited to attend today's closed session.

Council Member Chang stated that she was advised not to attend closed sessions for quite a while. She requested that whenever a closed session is held on this matter, that special counsel discuss the closed

session with her attorney. She would be able to make a decision or judgment thereafter. She stated that she would abstain from voting on this item.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously **Agreed** to reconsider both prior actions.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Accepted** the Subcommittee's Report on the Results of their Investigation through July 2, 2004.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Scheduled** a special meeting to be held on July 14, 2004 to consider adoption of appropriate recommendations or to take action on the recommendations.*

Regarding item 4, Mayor Pro Tempore Sellers recommended that the Council defer consideration of this item until July 14.

Council Member Tate requested that the subcommittee incorporate input received thus far.

Mayor Pro Tempore Sellers clarified that there are two different investigative items. He said that there are still a few loose ends that will take a while to consider. In terms of the basic items of the report, he indicated that all input will be incorporated into the report.

Action: *Council Member Tate made a motion, seconded by Council Member Carr, to **Discuss** the investigation at the next meeting. The motion carried 4-0-1 with Council Member Chang abstaining.*

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 5:59 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK